

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AN ACT

RELATING TO WORKERS' COMPENSATION; AMENDING SECTIONS OF THE NMSA
1978 TO MAKE TECHNICAL REVISIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 52-1-1.1 NMSA 1978 (being Laws 1986, Chapter 22,
Section 26, as amended) is amended to read:

"52-1-1.1. DEFINITIONS.--As used in Chapter 52, Articles 1 through 6 NMSA
1978:

- A. "director" means the director of the workers' compensation
administration;
- B. "division" means the workers' compensation administration;
- C. "workers' compensation judge" means an individual appointed by
the director to act as a workers' compensation judge in the administration of the
Workers' Compensation Act or the New Mexico Occupational Disease Disablement
Law;
- D. "workman" or "workmen" means worker or workers;
- E. "Workmen's Compensation Act" means the Workers' Compensation
Act; and
- F. "workmen's compensation administration" or "administration" means
the workers' compensation administration."

Section 2. Section 52-1-2 NMSA 1978 (being Laws 1929, Chapter 113,
Section 2, as amended) is amended to read:

"52-1-2. EMPLOYERS WHO COME WITHIN ACT.--The state and each county,
municipality, school district, drainage, irrigation or conservancy district, public
institution and administrative board thereof employing workers, every charitable
organization employing workers and every private person, firm or corporation engaged
in carrying on for the purpose of business or trade within this state, and which employs
three or more workers, except as provided in Section 52-1-6 NMSA 1978, shall

1 become liable to and shall pay to any such worker injured by accident arising out of
2 and in the course of his employment and, in case of his death being occasioned
3 thereby, to such person as may be authorized by the director or appointed by a court
4 to receive the same for the benefit of his dependents, compensation in the manner
5 and amount at the times required in the Workers' Compensation Act."

6 Section 3. Section 52-1-7 NMSA 1978 (being Laws 1975, Chapter 284,
7 Section 4, as amended) is amended to read:

8 "52-1-7. APPLICATION OF PROVISIONS OF ACT TO CERTAIN EXECUTIVE
9 EMPLOYEES OR SOLE PROPRIETORS.--

10 A. Notwithstanding any provisions to the contrary in the Workers'
11 Compensation Act, an executive employee of a professional or business corporation
12 or limited liability company, employed by the professional or business corporation or
13 limited liability company as a worker as defined in the Workers' Compensation Act, or a
14 sole proprietor may affirmatively elect not to accept the provisions of the Workers'
15 Compensation Act.

16 B. Each executive employee or sole proprietor desiring to affirmatively
17 elect not to accept the provisions of the Workers' Compensation Act may do so by
18 filing an election in the office of the director.

19 C. Each executive employee or sole proprietor desiring to revoke his
20 affirmative election not to accept the provisions of the Workers' Compensation Act may
21 do so by filing a revocation of the affirmative election with the workers' compensation
22 insurer and in the office of the director. The revocation shall become effective thirty
23 days after filing. An executive employee shall cause a copy of the revocation to be
24 mailed to the board of directors of the professional or business corporation or limited
25 liability company.

26 D. The filing of an affirmative election not to accept the provisions of
27 the Workers' Compensation Act shall create a conclusive presumption that an
28 executive employee or sole proprietor is not covered by the Workers' Compensation
29 Act until the effective date of a revocation filed pursuant to this section. The filing of

1 an affirmative election not to accept the provisions of the Workers' Compensation Act
2 shall apply to all corporations or limited liability companies in which the executive
3 employee has a financial interest.

S
B

6
4
6
P
a
g
e

3

4 E. In determining the number of workers of an employer to determine
5 who comes within the Workers' Compensation Act, an executive employee who has
6 filed an affirmative election not to be subject to the Workers' Compensation Act shall
7 be counted for determining the number of workers employed by such employer.

8 F. For purposes of this section:

9 (1) "executive employee" means the chairman of the board,
10 president, vice president, secretary, treasurer or other executive officer, if he owns ten
11 percent or more of the outstanding stock, of the professional or business corporation
12 or a ten percent ownership interest in the limited liability company; and

13 (2) "sole proprietor" means a single individual who owns all the
14 assets of a business, is solely liable for its debts and employs in the business no
15 person other than himself."

16 Section 4. Section 52-1-30 NMSA 1978 (being Laws 1987, Chapter 235,
17 Section 14, as amended) is amended to read:

18 "52-1-30. PAYMENT OF COMPENSATION BENEFITS--INSTALLMENTS.--
19 Compensation shall be paid by the employer to the worker in installments. The first
20 installment shall be paid not later than fourteen days after the worker has missed
21 seven days of lost time from work, whether or not the days are consecutive.
22 Remaining installments shall be paid twice a month at intervals not more than sixteen
23 days apart in sums as nearly equal as possible, except as provided in Section 52-5-12
24 NMSA 1978."

25 Section 5. Section 52-1-43 NMSA 1978 (being Laws 1987, Chapter 235,
Section 18, as amended) is amended to read:

"52-1-43. COMPENSATION BENEFITS--INJURY TO SPECIFIC BODY
MEMBERS.--

A. For disability resulting from an accidental injury to specific body

<p>1 members, including the loss or loss of use thereof, the worker shall receive the weekly</p> <p>2 maximum and minimum compensation for disability as provided in Section 52-1-41</p> <p>3 NMSA 1978, for the following periods:</p> <p>4 Injury</p> <p>5 (1) one arm at or near shoulder, dextrous</p> <p>6 member..... 200 weeks</p> <p>7 (2) one arm at elbow, dextrous member..... 160 weeks</p> <p>8 (3) one arm between wrist at elbow, dextrous</p> <p>9 member..... 150 weeks</p> <p>10 (4) one arm at or near shoulder, nondextrous</p> <p>11 member..... 175 weeks</p> <p>12 (5) one arm at elbow, nondextrous member..... 155 weeks</p> <p>13 (6) one arm between wrist and elbow, nondextrous</p> <p>14 member..... 140 weeks</p> <p>15 (7) one hand, dextrous member..... 125 weeks</p> <p>16 (8) one hand, nondextrous member..... 110 weeks</p> <p>17 (9) one thumb and the metacarpal bone thereof..... 55 weeks</p> <p>18 (10) one thumb at the proximal joint..... 34 weeks</p> <p>19 (11) one thumb at the second distal joint..... 22 weeks</p> <p>20 (12) one first finger and the metacarpal bone</p> <p>21 thereof 28 weeks</p> <p>22 (13) one first finger at the proximal joint..... 22 weeks</p> <p>23 (14) one first finger at the second joint 17 weeks</p> <p>24 (15) one first finger at the distal joint..... 12 weeks</p> <p>25 (16) one second finger and the metacarpal bone</p> <p>thereof 22 weeks</p> <p>(17) one second finger at the proximal joint..... 17 weeks</p> <p>(18) one second finger at the second joint..... 12 weeks</p>	<p>Compensation Benefits</p> <p>Number of Weeks</p>	<p>S</p> <p>B</p> <p>6</p> <p>4</p> <p>6</p> <p>P</p> <p>a</p> <p>g</p> <p>e</p> <p>4</p>
---	---	---

1	(19) one second finger at the distal joint.....	10 weeks	S
2	(20) one third finger and the metacarpal bone		B
3	thereof	17 weeks	6
4	(21) one third finger at the proximal joint.....	12 weeks	4
5	(22) one third finger at the second joint	10 weeks	6
6	(23) one third finger at the distal joint	10 weeks	P
7	(24) one fourth finger and the metacarpal bone		a
8	thereof	14 weeks	g
9	(25) one fourth finger at the proximal joint	14 weeks	e
10	(26) one fourth finger at the second joint.....	10 weeks	
11	(27) one fourth finger at the distal joint	7 weeks	
12	(28) loss of all fingers on one hand where thumb and		
13	palm remain	70 weeks	5
14	(29) one leg at or near hip joint, so as to preclude		
15	the use of an artificial limb.....	200 weeks	
16	(30) one leg at or above the knee, where stump remains		
17	sufficient to permit the use of an artificial		
18	limb	150 weeks	
19	(31) one leg between knee and ankle.....	130 weeks	
20	(32) one foot at the ankle.....	115 weeks	
21	(33) one great toe with the metatarsal bone		
22	thereof	35 weeks	
23	(34) one great toe at the proximal joint	17 weeks	
24	(35) one great toe at the second joint.....	12 weeks	
25	(36) one toe other than the great toe with the metatarsal		
	bone thereof	14 weeks	
	(37) one toe other than the great toe at the proximal		
	joint	10 weeks	
	(38) one toe other than the great toe at second or		

1	distal joint.....	8 weeks	S
2	(39) loss of all toes on one foot at proximal joint	40 weeks	B
3	(40) eye by enucleation	130 weeks	6
4	(41) total blindness of one eye.....	120 weeks	4
5	(42) total deafness in one ear.....	40 weeks	6
6	(43) total deafness in both ears	150 weeks.	P
			a
			g
			e

6 B. For a partial loss of use of one of the body members or physical
7 functions listed in Subsection A of this section, the worker shall receive compensation
8 computed on the basis of the degree of such partial loss of use, payable for the
9 number of weeks applicable to total loss or loss of use of that body member or
10 physical function.

11 C. In cases of actual amputation of the arm or leg, the workers'
12 compensation judge in his discretion may award compensation benefits in excess of
13 those provided in Subsection A of this section if there is substantial evidence to
14 support a finding that, because of the worker's advanced age, lack of education or
15 lack of training, he has in fact a partial disability which will disable him longer than the
16 time specified in the schedule in Subsection A of this section. The additional
17 compensation period may not in any event exceed twice the time specified in the
18 schedule in Subsection A of this section for such injury.

19 D. In determining the worker's compensation benefits payable to a
20 worker under this section for a disability resulting from a scheduled injury, the worker
21 is entitled to be compensated as provided in Subsection A of this section up to the
22 date the worker is released from regular treatment by his primary treating health care
23 provider, as defined in Section 52-4-1 NMSA 1978, if he is in fact totally disabled
24 during that time. Any compensation paid up to that date shall be in addition to the
25 compensation allowed under Subsection A of this section, but in no event shall any
worker be entitled to compensation for a period in excess of seven hundred weeks."

Section 6. Section 52-1-66 NMSA 1978 (being Laws 1988, Chapter 119,
Section 1, as amended) is amended to read:

1 "52-1-66. NONRESIDENT EMPLOYERS EMPLOYING WORKERS IN STATE-- S
2 REQUIREMENT FOR INSURANCE--ENFORCEMENT.-- B

3 A. Every employer not domiciled in the state who employs workers 6
4 engaged in activities required to be licensed under the Construction Industries 4
5 Licensing Act and every other employer not domiciled in the state who employs three 6
6 or more workers within the state, whether that employment is permanent, temporary or P
7 transitory and whether the workers are residents or nonresidents of the state, shall a
8 comply with the provisions of Section 52-1-4 NMSA 1978 and, unless self-insured, shall g
9 obtain a workers' compensation insurance policy, or an endorsement to an existing e
10 policy, issued in accordance with the provisions of Section 59A-17-10.1 NMSA 1978. 7

11 An employer who does not comply with the foregoing requirement shall be enjoined
12 from doing business in the state pursuant to Section 52-1-62 NMSA 1978 and shall be
13 barred from recovery by legal action for labor or materials furnished during any period
14 of time in which he was not in compliance with the requirements of this section, and, if
15 the noncomplying employment is in an activity for which the employer is licensed under
16 the provisions of the Construction Industries Licensing Act, the employer's license is
17 subject to revocation or suspension for the violation.

18 B. The construction industries division of the regulation and licensing
19 department shall promulgate rules and regulations to insure compliance with
20 Subsection A of this section."

21 Section 7. Section 52-3-20 NMSA 1978 (being Laws 1965, Chapter 299,
22 Section 7, as amended) is amended to read:

23 "52-3-20. PAYMENT OF BENEFITS IN INSTALLMENTS.--Benefits shall be paid
24 by the employer to the worker in installments. The first installment shall be paid not
25 later than fourteen days after the worker has missed seven days of lost time from
work, whether or not the days are consecutive. Remaining installments shall be paid
twice a month at intervals not more than sixteen days apart, in sums as nearly equal
as possible, except as provided in Section 52-5-12 NMSA 1978."

Section 8. Section 52-5-1.2 NMSA 1978 (being Laws 1990 (2nd S.S.), Chapter

1 2, Section 62) is amended to read:

2 "52-5-1.2. WORKERS' COMPENSATION ADMINISTRATION CREATED.--

3 There is created as an entity of state government the "workers' compensation
4 administration".

5 Section 9. Section 52-5-3 NMSA 1978 (being Laws 1986, Chapter 22, Section
6 29, as amended) is amended to read:

7 "52-5-3. REPORTS--DATA GATHERING.--

8 A. The intent of this section is to allow the director to gather data and
9 conduct studies to evaluate the workers' compensation and occupational disease
10 disablement system in New Mexico. This includes evaluating the benefits structure
11 and the costs incurred under each version of the Workers' Compensation Act and the
12 New Mexico Occupational Disease Disablement Law. To this end, the director shall
13 establish baseline data against which to assess the changes in the law.

14 B. The director shall independently evaluate insurance industry data
15 pertaining to workers' compensation and occupational disease disablement claims and
16 payments, as well as other information the director believes to be necessary and
17 relevant to a thorough evaluation of the system's effectiveness. In addition to data
18 generated by insurance industry representatives and organizations, the director shall
19 collect data from employers, claimants and other relevant parties.

20 C. Unless otherwise provided by law, the director shall have access to
21 insurance industry information that contains workers' compensation and occupational
22 disease disablement claim data as the director determines is necessary to carry out
23 the provisions of this section.

24 D. The director shall have access to files and records of:

25 (1) the labor department that pertain to:

(a) the name and number of employees reported by
employers;

(b) employers' mailing addresses;

(c) federal identification numbers; and

- 1 (d) general wage information;
- 2 (2) the insurance division of the public regulation commission
- 3 that pertain to:
- 4 (a) historical insurance classification rates and total
- 5 premiums paid during given periods of time;
- 6 (b) insurers licensed to underwrite casualty insurance;
- 7 and
- 8 (c) records of group self-insurers;
- 9 (3) the human services department that include names,
- 10 addresses and other identifying information of recipients of benefits and services
- 11 pertaining to income support;
- 12 (4) the taxation and revenue department that identify
- 13 employers paying workers' compensation assessments in accordance with Section 52-
- 14 5-19 NMSA 1978; and
- 15 (5) the motor vehicle division of the taxation and revenue
- 16 department that pertain to the identity of licensed drivers and the ownership of motor
- 17 vehicles.

18 E. Information that is confidential under state law shall be accessible to

19 the director and shall remain confidential.

20 F. The director shall prepare an annual report. He shall publish in that

21 report and in other reports as he deems appropriate such statistical and informational

22 reports and analyses based on reports and records available as, in his opinion, will be

23 useful in increasing public understanding of the purposes, effectiveness, costs,

24 coverage and administrative procedures of workers' compensation and in providing

25 basic information regarding the occurrence and sources of work injuries or

disablements to public and private agencies engaged in industrial injury prevention

activities. The reports shall include information concerning the nature and frequency

of injuries and occupational diseases sustained and the resulting benefits, costs and

other factors that are important to furthering the intent of this section."

1 Section 10. Section 52-5-12 NMSA 1978 (being Laws 1986, Chapter 22, SB
2 Section 38, as amended) is amended to read: 6
3 "52-5-12. PAYMENT--PERIODIC OR LUMP SUM.-- 4
4 A. It is stated policy for the administration of the Workers' 6
5 Compensation Act and the New Mexico Occupational Disease Disablement Law that it Pa
6 is in the best interest of the injured worker or disabled employee that he receive ge
7 benefit payments on a periodic basis. Except as provided in Subsections B, C and D 1
8 of this section, lump-sum payments in exchange for the release of the employer from 0
9 liability for future payments of compensation or medical benefits shall not be allowed.
10 B. With the approval of the workers' compensation judge, a worker
11 may elect to receive compensation benefits to which he is entitled in a lump sum if he
12 has returned to work for at least six months, earning at least eighty percent of the
13 average weekly wage he earned at the time of injury or disablement. If a worker
14 receives his benefit income in a lump sum, he is not entitled to any additional benefit
15 income for the compensable injury or disablement and he shall only receive that
16 portion of the benefit income that is attributable to the impairment rating as determined
17 in Section 52-1-24 NMSA 1978. In making lump-sum payments, the payment due the
18 worker shall not be discounted at a rate greater than a sum equal to the present value
19 of all future payments of compensation computed at a five-percent discount
20 compounded annually.
21 C. After maximum medical improvement and with the approval of the
22 workers' compensation judge, a worker may elect to receive a partial lump-sum
23 payment of workers' compensation benefits for the sole purpose of paying debts that
24 may have accumulated during the course of the injured or disabled worker's disability.
25 D. If an insurer pays a lump-sum payment to an injured or disabled
worker without the approval of a workers' compensation judge and if at a later date
benefits are due for the injured or disabled worker's claim, the insurer alone shall be
liable for that claim and shall not in any manner, including rate determinations and the
employer's experience modifier, pass on the cost of the benefits due to the employer.

1 E. If the compensation benefit to which a worker is entitled is less than
2 fifty dollars (\$50.00) per week, any party may petition the workers' compensation judge
3 to consolidate that payment into quarterly installments.

4 F. Periodic compensation payments under the Workers' Compensation
5 Act or the New Mexico Occupational Disease Disablement Law for disability arising
6 from primary mental impairments or secondary mental impairments shall be paid as
injured and shall not be included in any lump-sum payments."

7 Section 11. Section 52-6-24 NMSA 1978 (being Laws 1986, Chapter 22,
8 Section 98) is amended to read:

9 "52-6-24. NOTICE AND HEARING--APPEAL.--Notice and hearing required by
10 the provisions of Sections 52-6-21, 52-6-22 and 52-6-23 NMSA 1978 shall be given
11 and held pursuant to the applicable provisions of Chapter 59A, Article 4 NMSA 1978.
12 A party may appeal from an order of the director made after a hearing, pursuant to
13 Section 39-3-1.1 NMSA 1978."
14
15
16
17
18
19
20
21
22
23
24
25

S
B
6
4
6
P
a
g
e
1
1